

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

TIMOTHY SIMMS,	:	Case No. 2:22-cv-474
	:	
Petitioner,	:	
	:	
vs.	:	District Judge Edmund A. Sargus
	:	Magistrate Judge Peter B. Silvain, Jr.
	:	
KEITH FOWLEY,	:	
	:	
	:	
Respondent.	:	

REPORT AND RECOMMENDATION¹

This matter is before the Court on Petitioner's Application to Proceed *In Forma Pauperis* and without the prepayment of fees. (ECF No. 1). Petitioner, an inmate at the Grafton Correctional Institution, filed his Application in connection with a petition for a writ of habeas corpus that he intends to file in July 2022. (Notice of Intent, ECF No. 2).

The filing fee for a petition for a writ of habeas corpus is \$5. 28 U.S.C. § 1914(a). Petitioner's Application reflects that as of February 2, 2022, he had \$244.58 on account to his credit. (ECF No. 1, PageID 8-9). His average monthly deposits for the past six months were \$322.50 per month. (*Id.* at PageID 8). His average monthly balance was \$279.77. (*Id.*) The Application thus demonstrates that Petitioner has sufficient funds available to pay the full \$5 filing fee to institute a habeas corpus action. Accordingly, the Undersigned **RECOMMENDS** that Petitioner's Application for leave to proceed *in forma pauperis* (ECF No. 1) be **DENIED** and that he be ordered to pay the full filing fee of \$5 to proceed.

February 15, 2022

s/Peter B. Silvain, Jr.

Peter B. Silvain, Jr.
United States Magistrate Judge

¹ Attached is a NOTICE to the parties regarding objections to this Report and Recommendation.

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).